

BOARD OF APPEALS CASE NO. 5341

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BEFORE THE

APPLICANTS: David & Nancy Yohn

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to allow a nursing
home and assisted living facility in the AG District;
3892 Norrisville Road, Jarrettsville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/11/03 & 4/16/03

HEARING DATE: May 28, 2003

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Record: 411/03 & 418/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, David S. and Nancy B. Yohn, are requesting a special exception, pursuant to Section 267-53(F)(7) of the Harford County Code, to allow a nursing home and assisted living facility in an AG/Agricultural zone.

The subject parcel is located at 3982 Norrisville Road, Jarrettsville, MD 21084 and is more particularly identified on Tax Map 23, Grid 4E, Parcel 133. The parcel consists of 14.17± acres, is zoned AG/Agricultural, and is entirely within the Fourth Election District.

FINDINGS OF FACT

For the Applicant appeared Colleen Smith, assistant manager of Madonna Heritage; Kevin Small, an expert in the area of land planning and landscape architecture; Gerald Baxter, an expert in the field of architecture; and Rob Jones, an expert in the field of environmental engineering. For the Department of Planning and Zoning appeared Anthony McClune, Chief Current Land Planning Division. In opposition appeared several area residents, including Candice Sanborn, Matthew Hayden, Wayne Allen, Melanie Harold, Jim Shields, Gay Shields and Tony Pezzica.

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There is currently an 8,000 square foot assisted living operation on the property known as Madonna Heritage. It has provided a residence for elderly persons for over 17 years. At the present time, there are 15 residents in what is described as a “home-like” setting. There are 8 employees today working three 8-hour shifts. The residents do not operate motor vehicles and only leave the premises for shopping or medical care and are generally under staff supervision during such trips. There are, on average, 25 visitors per week to the facility. Church groups, boy scouts, trash collectors and an occasional ambulance and medical personnel represent other visitors to the property. Food is delivered once every two weeks. The property has 14 acres and is surrounded by residential uses. The Applicant is seeking approval to provide care for up to 92 residents. If approved, the number of employees necessary to provide services will increase to 32 working three shifts. There are no wetland or buffer issues associated with the request and no Natural Resource District areas are impacted.

The proposal includes the construction of four high-end residential structures with a courtyard area between the buildings. Access will be from Norrisville Road traversing the property to access from Breidenbaugh Court. The site plan showed a storm water management facility at the corner of the property where Norrisville Road and Breidenbaugh Court intersect. Forestation is provided that covers 2.8 acres that will provide some screening of the facility. It was undisputed that the proposal meets or exceeds all of the statutory provisions of Section 267-53(F)(7). Two-hundred eighty (280) residents would be allowed but only 92 are requested. Sufficient parking is provided and the building coverage is significantly less than the 40% allowed (4% proposed). None of the setbacks are an issue and the Code only requires 5 acres (14 acres existing). The structures are compatible in size and appearance with other residences commonly found in agricultural and rural residential areas of Harford County and will be similar in size and appearance to the buildings shown on Applicant’s Exhibits 7 and 9. There will be 25000 square feet of facility if the proposal is approved. The storm water management facility, although not fully engineered, will be of the approximate size and location as proposed by the Applicant and will be fenced. When complete, the facility will have what was described as a comforting, residential atmosphere in a village-like setting.

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From an engineering standpoint, perc tests conducted on the property yielded favorable results and indicate that the parcel can accommodate the proposed use. There are two wells on the property today and a third will most likely be needed. Permits will be obtained from the Maryland Department of the Environment and will be based on Maryland requirements to obtain a groundwater appropriation permit. These permits are only issued after a finding by MDE that there is adequate water supplies to serve the facility.

The Department of Planning and Zoning recommends approval of the request. In making its recommendation the Department examined the Code provisions for the facility and the Limitations Guides and Standards set forth at Section 267-9I of the Harford County Code. The Department concluded that the use meets or exceeds all Code requirements and is compatible with other uses in the neighborhood. Additionally, applying the Maryland standard for special exceptions, the Department concluded that there would be a slight increase in traffic to and from the facility but it was not significant and further, that any visual impacts would be mitigated by the proposed screening and a forestation plan. While the Department concluded that there were some minimal impacts associated with an approval of the proposed use, those impacts were not different than the impacts associated with other assisted living facilities of this size and nature regardless of their location within the Agricultural zone.

Opponents of the request described Breidenbaugh Court as the only access from Norrisville Road to their neighborhood. Breidenbaugh Court serves 8 houses and is not a through road. Children often play on the Court and traffic is very limited because of the limited number of homes that utilize the road. Because the proposal includes an access point for the facility on Breidenbaugh Court, opponents raised safety and noise concerns associated with the increased vehicular traffic on the Court. Opponents also felt like the proposed use would be commercial in nature and not compatible with existing residential uses. At least one opponent believed his property values would decline if the facility were approved. The sediment control pond was an issue because of its appearance, a chain link fence and its location. The first thing residents will see as they enter Breidenbaugh Court will be the pond surrounded by a chain link fence and testimony indicated this would be unsightly and objectionable. Adequacy of septic area and water supply were other concerns but no testimony was provided that would substantiate those fears.

CONCLUSION

The Applicants, David S. and Nancy B. Yohn, are requesting a special exception, pursuant to Section 267-53(F)(7) of the Harford County Code, to allow a nursing home and assisted living facility in an AG/Agricultural zone.

Section 267-53F(7) provides:

“Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR, VB and B1 Districts, provided that:

- (a) A minimum parcel area of five acres is established and a maximum building coverage of 40% of the parcel is provided.
- (b) The setbacks of the district for institutional uses shall be met.
- (c) The density shall not exceed 20 beds per acre of the parcel.”

Section 267-51 provides:

“Purpose. Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General regulations.

- A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

The testimony indicates that the Applicant’s proposal can meet or exceed each and every specific criterion necessary for a grant of the Special Exception use proposed. The parcel exceeds 5 acres (14 acres existing); Maximum building coverage is only 4.0% (40.0% allowed); all of the setbacks for institutional uses in the Agricultural zone are met by the proposal; the density does not exceed 20 beds per acre (284 residents allowed, 92 proposed).

Having met each of the specified statutory requirements, Maryland law, in special exception cases then requires an impact analysis. The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted).

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These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

Generally speaking, the proposed structures are similar in size, height and overall appearance as other residences found in the agricultural and rural residential areas of Harford County. While the number of residents will certainly be greater than normally found in a residential use, the impacts to adjoining and/or neighboring properties is negligible as a result of the increased density. These residents seldom go outside, do not drive cars, are generally not noisy or disruptive and, for the most part, will have absolutely no impact on surrounding and adjacent properties. Even though the opponents generally felt that there was an adverse visual impact associated with the proposed use, the Hearing Examiner disagrees with that contention with regard to the proposed residences. These look like other homes already located in the area. Moreover, adequate screening is proposed and can be strategically located to mitigate any potential visual impact associated with the residences.

That said, the Hearing Examiner has two concerns with the proposal. First, the proposed location of the storm water management facility will be obtrusive. Such facilities are not normally associated with a residential use and the proposed location at the intersection of Norrisville Road and Breidenbaugh Court means that it will have a visual impact on every resident of Breidenbaugh Court and the impact will be unabated. The Applicant’s witnesses testified that the pond will be surrounded by a chain link fence. This is clearly out of character with the existing structures and uses in this community.

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Secondly, the Hearing Examiner is very concerned with the increase in vehicular traffic along Breidenbaugh Court. This road is presently a Court servicing only 8 homes. Because of the limited vehicular traffic presently, it is not surprising that neighborhood children use the Court as a play area. Norrisville Road is certainly not a safe road for bicycling, sating, skateboarding or other normal childhood activities. Similarly adult neighbors use Breidenbaugh Court for walks, jogging, biking and other similar activities. Today those activities can be safely undertaken because of the limited use by vehicles of Breidenbaugh Court. However, traffic will increase dramatically if the proposed facility is designed with a loop through traffic pattern with access to Breidenbaugh Court. Presumably, increasing the resident population 6-fold will also result in an identical increase in vehicles coming in and out of the property. If that assumption is near correct, Breidenbaugh Court could suddenly have added, 125 trips in an out of the facility each week just by visitors. That does not account for delivery trucks, trash collection and employee trips all of which will, in the opinion of the Hearing Examiner, result in not only an unsafe road condition on Breidenbaugh Court but one that will significantly and adversely alter the neighborhood's present uses of that Court.

People's Counsel has proposed 3 conditions that should be imposed if approval were granted. First, that the storm water management facility be relocated. Second, that the access to Breidenbaugh Court be eliminated and lastly, that screening be provided along the entire property line abutting Breidenbaugh Court. The Applicant's counsel proposes that any such conditions be incorporated in a modified site plan that would include, necessarily, any proposed conditions and substantially represent the final site plan.

For all of the forgoing reasons, the Hearing Examiner recommends approval of the special exception with the following conditions:

1. The storm water management facility must be relocated away from the intersection of Breidenbaugh Court and Norrisville Road. The relocation must be fully screened from view of residents accessing Breidenbaugh Court and be in substantial compliance with a final landscaping plan to be submitted for review and approval by the Department of Planning and Zoning. The relocated facility must be made part of a modified site plan that will represent the final site plan and must be submitted to the Department of Planning and Zoning for their approval.

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2. Access to Breidenbaugh Court must be eliminated. The service entrance may be relocated to Norrisville Road and any relocation will be set forth on a modified site plan that will become the final site plan that is submitted to the Department of Planning and Zoning for its approval.
3. Screening shall be planted along the entire property line abutting Breidenbaugh Court and will extend along the rear of the property to screen the facility from the view of residents located to the rear of the property. Trees shall be a minimum of 8 feet in height when planted and shall consist of evergreen varieties commonly found to grow successfully in Harford County. All such screening shall be submitted as part of an overall landscaping plan that shall be prepared by the Applicant and submitted for review and approval by the Department of Planning and Zoning.
4. A detailed site plan conforming to the directives and conditions herein shall be submitted for approval through the Development Advisory Committee (DAC). The site plan must substantially conform to the site plan submitted herein as Attachment 4 with the modifications, as required by the Hearing Examiner and set forth herein.
5. The approval is limited to 92 residents. No increase in the number of residents shall be allowed without further Board approval.

Date JULY 17, 2003

**William F. Casey
Zoning Hearing Examiner**